



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. K. v Canada Employment Insurance Commission*, 2020 SST 656

Tribunal File Number: GE-20-612

BETWEEN:

**A. K.**

Appellant / Claimant

and

**Canada Employment Insurance Commission**

Respondent / Commission

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Raelene R. Thomas

HEARD ON: March 5, 2020

DATE OF DECISION: March 11, 2020

## **DECISION**

[1] The appeal is dismissed. The Claimant received the correct amount of employment insurance (EI) benefits for the correct amount of weeks.

## **OVERVIEW**

[2] The Claimant stopped working on June 28, 2019, due to a shortage of work. She established a claim for EI regular benefits effective July 28, 2019. The Commission initially decided the Claimant was entitled to 20 weeks of EI benefits at a rate of \$154 each week. The Claimant requested reconsideration of that decision because she had been working full time for over a year and the Service Canada website said she could get up to 45 weeks of EI benefits. The Commission got additional information from the Claimant's employer about the hours she worked and the amount of money she earned. It then recalculated her entitlement and decided that she was entitled to 18 weeks of EI benefits at a rate of \$308 each week. The Claimant did not agree with this decision and appealed to the Social Security Tribunal.

## **PRELIMINARY MATTERS**

[3] As part of preparing for this appeal, I reviewed the representations the Commission made to the Tribunal. Following my review, I asked the Commission to provide some relevant legislation, a copy of the decisions it communicated to the Claimant and, clarification of the method and numbers it used to calculate the Claimant's insurable hours and insurable earnings. The Commission advised that it did not communicate its decisions to the Claimant. It did provide the remainder of the requested information. I admitted this additional information into evidence because it was relevant to the issue under appeal and it would not prejudice the Claimant. The Claimant was provided with the information prior to the hearing.

## **ISSUE**

[4] I have to decide if the Commission correctly determined the Claimant's number of weeks of EI benefits and the weekly amount of those EI benefits.

## ANALYSIS

[5] To receive EI benefits a claimant must have the required number of hours of insurable employment.<sup>1</sup> Claimants earn hours of insurable employment during the qualifying period. A qualifying period is usually the 52 weeks before the claimant's current benefit period.<sup>2</sup>

[6] The Claimant must prove that she meets the qualifying conditions to establish a claim for EI benefits.<sup>3</sup>

### *The Claimant received the correct number of weeks of EI benefits*

[7] The number of weeks of EI benefits that a claimant receives is based on two things: the number of hours of insurable employment the claimant earns in the qualifying period and the rate of unemployment in the economic region where the claimant resides when they apply for EI benefits.<sup>4</sup>

[8] The Claimant submitted that the Commission's web-site said she could receive up to 45 weeks of EI benefits. Instead, she received 18 weeks. She said that she spoke to her friends who had stopped working and they received EI benefits for a longer period than she had. At the hearing, the Claimant testified that she was not aware of the way the number of weeks of benefits or the amount of weekly benefits were calculated.

[9] The Claimant applied for EI benefits on July 30, 2019. The Commission established the qualifying period as July 29, 2018, until July 27, 2019. The Claimant did not dispute the dates of the qualifying period. She testified that she did not meet any of the conditions that would extend her qualifying period.<sup>5</sup>

[10] The Claimant testified that she was absent from Canada for four months during the qualifying period and did not work during that time. When she applied for EI benefits, she said she was told that the time spent out of Canada would not count against her. She thought that the

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<sup>1</sup> *Employment Insurance Act*, section 7(2)(b). This is how I refer to the legislation that applies to this appeal.

<sup>2</sup> Qualifying periods are set out in *Employment Insurance Act*, section 8(1)(a). A qualifying period can be shorter than 52 weeks if the claimant has had a benefit period within the year before her starting a new claim for EI benefits.

<sup>3</sup> *Employment Insurance Act*, section 49(1)

<sup>4</sup> *Employment Insurance Act*, section 12(2)

<sup>5</sup> There are certain circumstances where a qualifying period may be extended. Those circumstances are listed in section 8 of the *Employment Insurance Act*.

hours of work she earned prior to her qualifying period would be used to calculate her benefits. Unfortunately, Claimants cannot use hours earned outside their qualifying period to qualify for benefits.<sup>6</sup> The hours of insurable employment and the insurable earnings the Claimant earned during the qualifying period from July 29, 2018, until July 27, 2019, are all that can be used to determine the number of weeks of EI benefits and the amount of EI benefits.

[11] At the time she applied for EI benefits, the Claimant lived in the EI economic region of Toronto. The Commission submitted that on July 30, 2019, the unemployment rate for the EI economic region of Toronto was 5.9%. The Claimant does not dispute this figure.

[12] The Claimant's employer gave her a handwritten Record of Employment (ROE) stating that she was paid monthly, worked 1341 hours (according to the chart that requires the last 13 months of work be reported) and earned \$8,424 (according to the chart that requires the last 7 pay periods be reported). The employer did not complete the section of the ROE that lists the Claimant's insurable earnings by pay period.

[13] The Commission initially determined the Claimant had accumulated 1,144 hours of insurable employment and earned \$6,177.00 of insurable earnings in the qualifying period. Based on these amounts the Commission determined the Claimant was entitled to 20 weeks of EI benefits at the rate of \$154.00 per week.

[14] When the Claimant requested that her amount of benefits be reconsidered, the Commission contacted her employer for the exact number of hours she worked in each month and the exact amount she was paid in each of her monthly pay cheques. Based on this information the Commission determined that the Claimant's number of insurable hours in the qualifying period was 1,046. It did this by averaging her insurable hours during the entire qualifying period.<sup>7</sup> I have reviewed the Commission's detailed weekly allocation of the Claimant's hours and agree with its submission the Claimant accumulated 1,046 hours of insurable employment in the qualifying period.<sup>8</sup> The Claimant did not dispute this.

[15] When the Claimant applied for EI benefits, the regional rate of unemployment for the EI

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<sup>6</sup> *Haile v. Attorney General of Canada*, 2008 FCA 193. This is how I refer to the court cases containing principles the law requires me to apply to the circumstances of this appeal.

<sup>7</sup> *Employment Insurance Regulations*, section 22(1)

<sup>8</sup> The detailed allocation of hours to each week during the qualifying period is on pages GD3-26 and GD3-27

economic region of Toronto was 5.9%. The law says that a claimant who has between 1,015 and 1,049 hours of insurable employment in their qualifying period in a region where the unemployment rate is less than 6% is entitled to 18 weeks of EI benefits. The Claimant was paid 20 weeks of EI benefits. The Commission reduced the number of weeks of benefits to 18. As a result, I find the Claimant received the correct number of weeks of EI benefits.

***The Claimant received the correct weekly amount of EI benefits***

[16] The dollar amount of EI benefits that a claimant receives is 55% of a claimant's weekly insurable earnings in a "calculation period."<sup>9</sup> The formula to calculate a claimant's weekly insurable earnings involves three steps.<sup>10</sup> The first step is to determine the rate of unemployment in the economic region where the claimant resides when they apply for EI benefits. That rate of unemployment determines the "number of weeks" that is used to calculate the weekly insurable earnings in the calculation period.<sup>11</sup> The "number of weeks" is the calculation period. Second, each week of the claimant's insurable earnings in the qualifying period is reviewed to find the highest weekly insurable earnings for the "number of weeks." Third, these weekly amounts and any money paid to the claimant by reason of lay-off or separation from employment are added together and then divided by the "number of weeks" to get the claimant's insurable weekly earnings.<sup>12</sup>

[17] The Claimant's request for reconsideration also led the Commission to recalculate her insurable earnings. Based on the more detailed information received from her employer about the hours she worked in each month and the amount of pay she received in each month, the Commission used an averaging formula to calculate her earnings on a weekly basis. Because the Claimant lived in an economic region with an unemployment rate of 5.9%, the "number of weeks" used to calculate her insurable earnings was 22.<sup>13</sup> The Commission looked at each week of her insurable earnings in the qualifying period and identified the 22 weeks when the Claimant was paid the highest amounts of earnings. Those 22 weekly amounts plus the Claimant's three weeks of vacation pay were then added together to equal \$12,285. I have reviewed the

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<sup>9</sup> *Employment Insurance Act*, section 15

<sup>10</sup> *Employment Insurance Act*, section 14

<sup>11</sup> *Employment Insurance Act*, section 14(2)

<sup>12</sup> *Employment Insurance Act*, section 14(3)

<sup>13</sup> *Employment Insurance Act*, section 14(2)

Commission's detailed weekly allocation of the Claimant's earnings and agree with its submission that the Claimant earned \$12,285 of insurable earnings in the calculation period.<sup>14</sup>

[18] The Claimant's weekly insurable earnings were then calculated as follows: \$12,285 was divided by 22 to equal \$558.41. The Claimant applied for EI regular benefits which means she was entitled to 55% of her weekly insurable earnings. Fifty-five percent of \$558.41 is \$307.13. The Claimant initially received \$154 per week in EI benefits. After reconsideration, the Commission determined the Claimant was entitled to receive EI benefits at a rate of \$308 per week. As a result, I find the Claimant received EI benefits at the correct weekly amount.

***Other matters***

[19] Because the Claimant had already received 20 weeks of EI benefits at a rate of \$157 per week and the Commission determined she should have been paid 18 weeks at a rate of \$308 per week, the Commission had to pay her an adjustment. The Commission calculated that adjustment to be \$2,724 and paid that amount to the Claimant on February 2, 2020.

**CONCLUSION**

[20] The appeal is dismissed.

Raelene R. Thomas  
Member, General Division - Employment Insurance Section

HEARD ON:	March 5, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. K., Appellant

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<sup>14</sup> The detailed allocation of hours to each week during the qualifying period is on pages GD3-26 and GD3-27